

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (*the Act*).

between:

***1248493 Alberta Ltd., COMPLAINANT
(as represented by Altus Group Limited)***

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER

J. Mathias, MEMBER

A. Zindler, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

| | |
|--------------------------|------------------------------|
| ROLL NUMBER: | 201491834 |
| LOCATION ADDRESS: | 29 Barlow Crescent NE |
| HEARING NUMBER: | 62940 |
| ASSESSMENT: | \$5,780,000 |

[1] This complaint was heard on the 20th day of October, 2011 at the office of the Assessment Review Board (ARB) located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

[2] Appeared on behalf of the Complainant:

- *R. Charlton* Senior Vice President Asset Management, WAM Development Group
- *D. Genereux* Agent, Altus Group Limited

[3] Appeared on behalf of the Respondent:

- *K. Hess* Senior Assessor, City of Calgary

[4] The following individual was present for all or part of the proceedings:

- *B. West* Associate, Bennett Jones LLP
(an Observer for the benefit of the Complainant)

[5] References have been made to numerous sources of material using the following abbreviations, relevant sections of these resources are found in Appendix "C":

"the Act"

The Municipal Government Act

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

"MRAT"

Matters Related to Assessment and Taxation

Alberta Regulation 220/2004 with amendments up to and including Alberta Regulation 330/2009

"MRAC"

Matters Related to Assessment Complaints Regulation

Alberta Regulation 310/2009

"Guidelines"

2010 Alberta Farm Land Assessment Minister's Guidelines

Ministerial Order No. L:268/10

"Manual"

1984 Alberta Assessment Manual

Schedule 7

"Tax Act"

Income Tax Act

Interpretation Bulletin: IT-322R (Farming Business)

"Black's Law"

Black's Law Dictionary

Bryan A. Garner (Editor-in-Chief), © 2009. Black's Law Dictionary (9th ed.). St. Paul: Thomson Reuters

"Oxford"

The Canadian Oxford Dictionary

Katherine Barber (Editor-in-Chief), © 2004. The Canadian Oxford dictionary (2nd ed.). Toronto: Oxford University Press Canada

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

[6] At the commencement of the agenda on October 11th, 2011 the Board had two files on the docket set for hearings. The Complainant alerted the Board to an additional fourteen files which had the same Complainant and Respondent parties and is controlled by the same organization; WAM Development Group. Seven of these files were scheduled for the Board later in the week, two more were scheduled with a different Board on October 17th and the remaining five were scheduled for a third Board on October 18th.

[7] Below are all sixteen of the files impacted by the first issue of the preliminary, procedural and jurisdictional issues raised:

| ROLL NUMBER: | LOCATION ADDRESS: | HEARING NUMBER: | ASSESSMENT: |
|--------------|--------------------------|-----------------|--------------|
| 413003807 | 11626 Stonehill DR NE | 63486 | \$4,410,000 |
| 201491610 | 4440 Country Hills BV NE | 62919 | \$5,780,000 |
| 201506029 | 13030 – 36 ST NE | 62945 | \$18,310,000 |
| 201491818 | 12331 – 36 ST NE | 62923 | \$42,870,000 |
| 201505690 | 12414 – 36 ST NE | 62942 | \$15,980,000 |
| 200765055 | 2626 Country Hills BV NE | 62913 | \$32,890,000 |
| 412003006 | 12210 Barlow TR NE | 63388 | \$14,640,000 |
| 387001019 | 13601 – 36 ST NE | 63473 | \$13,130,000 |
| 388005209 | 13621 – 36 ST NE | 63392 | \$5,580,000 |
| 201276383 | 12200 – 15 ST NE | 63147 | \$12,770,000 |
| 201569308 | 11900 – 18 ST NE | 62955 | \$13,710,000 |
| 413003708 | 11404 Stonehill DR NE | 63382 | \$4,610,000 |
| 388002313 | 13440 – 36 ST NE | 63397 | \$12,950,000 |
| 388002206 | 13440R – 36 ST NE | 63422 | \$3,020,000 |
| 201491834 | 29 Barlow CR NE | 62940 | \$5,780,000 |
| 201491826 | 30 Barlow CR NE | 62937 | \$11,020,000 |

Issue 1 - Postponement / Witnesses

[8] The Complainant requested a postponement of this hearing and an additional 15 hearings for the following reasons:

1. The issues to be heard include utilization of the land for *farming operations*.
2. September has been, and October, is the annual harvest period making it unreasonable to force the farmer from fields at this time to appear at assessment appeal hearings.
3. The assessor has not yet disclosed sufficient information in accordance with MGA section 299.
4. All of these assessment accounts have similar issues and evidence and it would be more expedient to have all heard in conjunction with each other.
5. The commonality of the matters to be decided dictates that all 16 complaints heard in conjunction with each other would be most efficient.
6. There has been difficulty in coordinating the parties for the purpose of pre-hearing meetings in order to attempt resolving certain issues.

[9] The Respondent argued against the postponement request for the following reasons:

1. Complaints against these assessments were filed on or before March 7th, 2011.
2. Hearings have been scheduled for 6 months with hearing notices being sent on April 12th, 2011. The Complainants could have and should have made the requested postponements months ago, rather than 2 business days before the first hearing. The Complainant has known that October is harvest season and could have requested a change in hearing date previously to avoid this conflict.
3. There is no signed witness reports within the Complainant Disclosure Document as required in *MRAC* 8(2)(a). In fact, on the cover page of Complainant Disclosure Document it specifically states in point number 4 that, "*The Complainant does not plan to present any witness or witness reports*". There are no witnesses properly before the Board so even if witnesses were available they cannot speak before the Board.
4. The assessor has disclosed information in accordance with MGA section 299 on January 17th, 2011 in response to the requests made on January 4th, 2011. Two additional requests were made with one using the wrong, altered form from 2010. The second request form was incorrectly filled out by asking for more than one file from one form. No complaint has been made to the Minister as permitted in *MRAT* section 27.6.
5. There was a meeting with the Complainant to discuss settling numerous other files. During that meeting there was the suggestion of a meeting to be set to perhaps settle some of these 16 files. No meeting was set and the Complainant had 6 months to sit down and discuss the files. There is no need to postpone now for that purpose.

[10] The Complainant rebutted the Respondent on its postponement request with the following information:

1. The weather this year had impacted the lateness of harvest and this was not foreseen in time to request an earlier hearing date.
2. Aerial photographs of October 2010 were not available to the Complainant until mid-September 2011.
3. The farmer, Mr. Bilben, will be able to clarify for the Board information on the *farm land*.
4. The engineer, Mr. Thomson, will also provide valuable information.

[11] **The Board found no exceptional circumstances to grant a postponement as required in *MRAC* 15(1) and has denied the request for the following reasons:**

1. **The farmer, Mr. Bilben, is not a witness who can be heard by the Board because this was not disclosed as required in *MRAC* 8(2)(a)(i) and 8(2)(c). The fact Mr. Bilben is not currently available does not provide a reason for a postponement.**
2. **Mr. Thomson, a Civil Engineering Technologist (CET), is not a witness who can be heard by the Board because this was not disclosed as required in *MRAC* 8(2)(a)(i) and 8(2)(c). The fact Mr. Thomson is not currently available does not provide a reason for a postponement.**
3. **The claim that the Respondent has failed to comply with an information request under section 299 of *the Act* is something that can be dealt with through a complaint to the Minister as found in *MRAT* 27.6. The Respondent contends they have answered completely all valid request forms.**
4. **The 16 hearings scheduled with three separate Boards over six days were amalgamated and rescheduled to this Board. This provided the Complainant the efficiency desired to hear all complaints by one Board. This accommodation**

mitigates the need for a postponement.

5. With no evidence of fruitful discussions regarding possible resolution to the files and with plenty of opportunity for the parties to speak during breaks there is no need to postpone for negotiation purposes.

Issue 2 - Eligibility of Witnesses

[12] The Complainant requested the Board to rule on the admissibility of witnesses. The same issue was asked in decision CARB 2502/2011-P. The Board agreed to note its objection and unless the evidence is different, the same decisions would apply:

[13] **The farmer, Mr. Bilben, is not a witness who can be heard by the Board because this was not disclosed as required in MRAC 8(2)(a)(i) and 8(2)(c).**

[14] **Mr. Thomson, CET, is not a witness who can be heard by the Board because this was not disclosed as required in MRAC 8(2)(a)(i) and 8(2)(c).**

Issue 3 - Evidence

[15] The Complainant and the Respondent both requested that all its respective; preliminary issues, procedural issues, evidence, comments, questions and answers as articulated during all previous hearings regarding the *farm land* issue before this Board be brought forward to this hearing.

[16] **The Board determined that all Complainant and Respondent; preliminary issues, procedural issues, evidence, comments, questions and answers as presented during decisions CARB 2502/2011-P, CARB 2515/2011-P, CARB 2513/2011-P, CARB 2872/2011-P, CARB 2663/2011-P, and CARB 2514/2011-P are to be brought forward and incorporated just as if it were presented during this hearing.**

Issue 4 - Onus

[17] The Respondent requested the Board to make a decision on a question of *onus*. *Onus* is short for *onus probandi* which is Latin for burden of proof. The Respondent wants the Board to decide whether the Complainant has made a *prima facie* case by proving there is an error with the assessment.

[18] The burden of proof is on the Complainant to prove its case in the Disclosure Document. The Complainant must prove the assessment is incorrect. The Complainant's request is to reclassify the entire parcel as *farm land*.

[19] **The Board found on the question of *onus* that a *prima facie* case has been established and will render a decision on the merits.**

Issue 5 - New Evidence in Rebuttal Documents

[20] The Respondent objected to all the evidence contained within the Rebuttal Documents C2 and C3 as it contained new evidence which should have been disclosed during the Disclosure Document.

[21] **The Board determined it would hear the evidence contained within the Rebuttal Documents C2 and C3 and would place appropriate weight when deliberating.**

No additional preliminary, procedural or jurisdictional issues were raised.

SECTION B: Issues of Merit

Background:

[22] The subject parcel, though registered to a numbered company, is one of the 16 parcels before the Board controlled by WAM Development Group. The subject is located in North East Calgary and is destined for development into an 1100 acre industrial and commercial development called '*StoneGate Landing*'. The Complainant acquired the parcels sometime prior to 2006. In 2008, work had begun with nearly two-thirds of the 1100 acres being stripped and graded in preparation for development at which time economic activity deflated, dramatically changing the timelines for new industrial and commercial development.

Property Description:

[23] The subject is a land-only assessment in North East Calgary east of 36th Street and north of 128th Avenue. The land is comprised of 24.37 acres destined for future commercial use. Currently, the Land Use Designation (LUD) is predominantly Commercial – Regional 3 f0.23 h18 (CR-3) LUD with some Special Purpose – City and Regional Infrastructure (S-CRI) LUD. For assessment purposes the Respondent does not indicate how many acres are assigned to each LUD.

Matters and Issues:

[24] The Complainant identified six Matters on both complaint forms for the Board to adjudicate:

- Matter 1 the description of the property or business,
- Matter 3 an assessment amount,
- Matter 4 an assessment class,
- Matter 5 an assessment sub-class,
- Matter 6 the type of property, and
- Matter 9 whether the property or business is assessable.

[25] Upon review of the complaint form, the Complainant acknowledged that only the following Matters are relevant to this hearing:

- Matter 3 an assessment amount,
- Matter 4 an assessment class, and

[26] A multitude of grounds were attached to the complaint form with one underlying question:

1. Is the subject property *farm land* or non-residential?

[27] The Board thoroughly investigated the disclosure documents, relevant legislation and regulations, and other reference materials to answer this question:

- Question 1** **Should the subject property be classified as *farm land*, non-residential land or a combination of both?**

Complainant's Requested Value:

| | |
|------------|------------------|
| \$ 750,000 | (complaint form) |
| \$ 7,900 | (in disclosure) |

Findings of Fact:

[28] The Board considered all information disclosed from each party and determined the following findings of fact. In Appendix "B" lists the documentary information disclosed to the Board.

1. Magnitude

[29] The Board is aware of the significance of the decision being made on the subject property. At the time of the first hearing the Board was prepared to hear all 16 complaints from WAM Development Group. For the reader to understand the magnitude of this decision and the remaining fifteen decisions, below, is a chart showing the assessment of each of the sixteen parcels in 2011 versus 2010.

| ROLL NUMBER: | 2010 ASSESSMENT | 2011 ASSESSMENT | 2011 AGREED VALUE | STATUS |
|-----------------|---------------------|----------------------|----------------------|------------------|
| 413003807 | \$1,610,000 | \$4,410,000 | \$2,710,000 | RECOMMENDATION |
| 201491610 | \$51,000 | \$5,780,000 | | CARB 2502/2011-P |
| 201506029 | \$19,420 | \$18,310,000 | \$18,310,000 | WITHDRAWN |
| 201491818 | \$39,500 | \$42,870,000 | | CARB 2514/2011-P |
| 201505690 | \$24,000 | \$15,980,000 | | CARB 2515/2011-P |
| 200765055 | \$26,510,000 | \$32,890,000 | | CARB 2513/2011-P |
| 412003006 | \$14,010,000 | \$14,640,000 | | CARB 2872/2011-P |
| 387001019 | \$32,500 | \$13,130,000 | \$13,130,000 | WITHDRAWN |
| 388005209 | \$2,880 | \$5,580,000 | | CARB 2873/2011-P |
| 201276383 | \$6,240,000 | \$12,770,000 | | CARB 2663/2011-P |
| 201569308 | \$0 | \$13,710,000 | \$13,710,000 | WITHDRAWN |
| 413003708 | \$3,420,000 | \$4,610,000 | \$2,960,000 | RECOMMENDATION |
| 388002313 | \$4,210 | \$12,950,000 | \$12,950,000 | WITHDRAWN |
| 388002206 | \$3,910 | \$3,020,000 | \$3,020,000 | WITHDRAWN |
| 201491834 | \$5,410,000 | \$5,780,000 | | CARB 2598/2011-P |
| 201491826 | \$10,150,000 | \$11,020,000 | \$16,500,000 | RECOMMENDATION |
| TOTAL | \$67,527,420 | \$217,450,000 | | |

[30] The Board is conscious that the decisions being rendered by the Board have real financial implications on the taxpayer. The Board invested significant time conducting an extensive review of evidence, case law, legislation, regulations and resource materials in order to arrive at a fair and equitable decision. In the end, the Complainant and Respondent were able to agree on the assessment value of 8 complaints.

2. Understanding the Issues

[31] During the proceedings, there was confusion at times by some parties as to Land Use Designation, property classification for assessment purposes and in fact the Matters (correctly) before the Board. Additionally, under any given Land Use Designation, the uses are either: permitted, discretionary or legal but non-conforming. To assist the reader in understanding the

issues and the decision, the Board offers the following explanation.

[32] As per *the Act* there are ten Matters which can be adjudicated by the Board. Two of the Matters before the Board were assessment amount and assessment class.

[33] An appeal of the assessment amount deals with the valuation and sometimes the valuation methodology. In Alberta there are three accepted valuation methodologies; the Direct Sales Comparison Approach, the capitalized Income Approach and the Cost Approach. The legislation and attendant regulations do not dictate which valuation approach is to be used by the assessment authority in preparing an assessment for non-residential property. However, the Direct Sales Comparison Approach is the accepted norm when dealing with vacant land because typically there is sufficient comparable sales information to prepare an accurate assessment. When utilizing the Direct Sales Comparison Approach the comparable sales used are from the same or similar Land Use Designations. For example: industrial are compared with industrial, commercial with commercial, *et cetera*.

[34] An appeal of the assessment class deals only with the classification for assessment purposes of the property. In Alberta, as per *the Act*, there are just four classes the assessment authority can utilize; residential, non-residential, *farm land*, and machinery and equipment. Machinery and equipment is a special classification primarily for oilfield related industry and not pertinent to the subject property. The classification for assessment purposes and the Land Use Designation are typically the same. For instance: a single-family home in a properly zoned residential neighbourhood is classified as residential. And a convenience store on collector road is classified for assessment purposes as non-residential and its use is either permitted or discretionary in that location.

[35] Where confusion sets in for many people is on transitional land. Land in transition is usually found in urban settings and typically is vacant or, in some cases, may have been previously developed. The classification for transitional land follows its use until that use ceases. If the transitional land has had a change in its Land Use Designation, which is typically the case in an urban environment, the use on the transitional land may no longer be permitted or discretionary. Therefore it becomes a non-conforming use. In *the Act* section 643(2) it provides for non-conforming uses to continue for as long as the use does not cease for a period greater than six months.

[36] When transitional land is not being used, the classification follows the Area Structure Plan or Land Use Designation for its intended future use, either residential or non-residential. However, if the transitional land is being used and that use was either a permitted or a discretionary use prior to the land use redesignation, it is a legal but non-conforming use.

[37] What this means is; if the current Land Use Designation or 'zoning' of some transitional land is residential, for an example, and if the zoning does not permit an industrial use, and if at the time the rezoning occurred there was an industrial use on the land as either a permitted or a discretionary use, then that industrial use may continue legally as a non-conforming use until that use ceases for a period greater than six months.

[38] In this case, the use that existed prior to land use redesignation was a *farm operation*. The assessment authority classified this transitional land as *farm land* and the land owner enjoyed the regulated assessment rate for *farm land* because the land was being farmed as a legal but non-conforming use.

[39] The Respondent alleges that at some point the use as a *farming operation* ceased for a period greater than six months. Because the various Land Use Designations in place, for the most part, do not permit *farming operations*, the transitional lands can no longer be classified for assessment purposes as *farm land*.

[40] Sometimes the Land Use Designation permits a *farming operation*, however if it is not being used as a *farming operation* it is still classified at its future intended use; as either residential or non-residential. When it comes to classifying land as *farm land*, which is regulated by *the Act*, the use is the determinate factor.

[41] Some of the subject land or land adjacent to the subject has a Land Use Designation that permits a *farming operation*. However, because the Respondent alleges the land is vacant and is not being used for farming it has been classified as non-residential.

3. Farm Land

[42] The Board, as have most Albertans, has seen plenty of *farm land* through our daily lives without giving much thought of what *farm land* is. The question is of vital importance to the Board in order to determine the matters at hand. In some ways the definition of *farm land* is subjective. While the legislation and regulations seem to contemplate a *bona fide farming operation*; however they provide little guidance in establishing exactly what that is.

[43] The key issue the Board has to determine is: *what exactly is farm land for assessment purposes?* The obvious first place to look is the legislation itself and the Board found in section 297(1)(c) guidance that differentiated *farm land* from other classes and in section 297(4) *the Act* points the Board to the term *farming operations* with the definition found in *MRAT* regulation 1(i). The Board found that the definition of *farming operations* clearly contemplates work involved in farming as: "*raising, production and sale of agricultural products*" as opposed to a haphazard approach, hoping that a crop might someday appear and then be harvested. The word *agricultural* is used in the regulation's definition which led the Board to *MRAT* 1(b) where *agricultural value* is defined as: "*the value of a parcel of land based exclusively on its use for farming operations.*"

[44] The Board sought definitions in both *Oxford* and *Black's Law* dictionaries where the Board is most intrigued by the phrasing in *Black's Law* of what *agriculture* is: "*the 'science' or 'art' of cultivating soil, harvesting crops, and raising livestock.*" The use of the terms '*science*' and '*art*' clearly paid deference to the *bona fide* farmers whom carefully and methodically groom land to produce viable agricultural *crops*.

[45] Of note is the Legislature's choice of wording; *farm land* versus *farmland*. The Board is curious if this is an intentional wording choice to describe land used for a *farm* rather than the mere suitability of land for farming as the definition of *farmland* suggests.

[46] Not all resources reviewed by the Board provided the same standard of '*science*'. One definition simply stated "*tillage of soil*", and the *Income Tax Act* section 248(1) also used the loose term of "*tillage of the soil*", however, the full reading of the interpretation bulletin IT-322R brings out the '*science*' of farming referred to in *Black's Law*. This interpretation bulletin, loosely paraphrased, indicates that there must be a plan to produce a viable crop and an investment in capital to be considered a *bona fide farming operation*. In addition the interpretation bulletin speaks to the intentions of the owners at attempting to produce a viable crop rather than holding

land for capital gain. In addition the Legislators' decision to produce a comprehensive *farm land* assessment *Manual* speaks volumes to its intent.

[47] Upon extensive review it became apparent that *farm land* is not a loosely used term to describe land that is merely suitable for farming. Rather it is land actually suitable and used for the agricultural purposes. The term agricultural implies more than tilling the soil and hoping one day to harvest a meagre crop. It is the '*science*' that many Albertans practice which sees cultivation and effort placed into making a harvestable and saleable crop in the context of a *bona fide farming operation* whose business is the production of products in a real, ongoing business.

4. Lease – Farm Land (C1 pages 75 – 86)

[48] The *farm* lease is for a one year term commencing April 1, 2011. According to verbal testimony this is a renewal. However, there is no evidence within the lease to support that position. The Complainant often referred to the lease as 1,000 acres however upon calculation it is determined to be 928 acres. According to the lease, approximately 35% of the subject is leased for farming. The lease term and signing dates are outside of the valuation period as found in *MRAT* 1(f) and *the Act* in sections 284(1)(x) and 289(2)(a). Based primarily on the lease term being outside the valuation period the Board placed little weight on this evidence.

5. Assessment Request for Information – Farm Land (C1 pages 93 – 98)

[49] The Assessment Request for Information (ARFI) for the 2012 assessment year made an assertion that 24.36 acres is being farmed in 2011, creating an estimated total crop value of \$730, which is to be harvested in the future, perhaps in 2012. The Board finds the ARFI evidence of little value as it is outside of the valuation period as found in *MRAT* 1(f) and *the Act* in sections 284(1)(x) and 289(2)(a).

6. Photographs (C1 pages 17, C2 pages 5 – 28, and R1 pages 18, 19, 35 – 42, and 48 – 68)

[50] The photographs provided by the Complainant were purported to be taken either by Mr. Genereux, Mr. Charlton or Mr. Thomson in 2011. The photographs of the subject are from a distance with no discernable details.

[51] The Respondent provided photographs of the parcel taken by aircraft in October 2009 and 2010 clearly showing the entirety of the subject stripped and graded. The additional photographs clearly show no agricultural activity. On portions of the subject are standing water, grass and weeds. The date and location of each photograph is clearly marked however the Board prefers a map showing exactly where each photo is taken with the angle of view indicated. The Board placed appropriate weight on the photographic evidence taken by the assessment authority, within the valuation period, and of the subject.

7. Affidavit – Farmer (C3 pages 2 – 9)

[52] Contained within the Rebuttal Document, the affidavit from the farmer is deemed by the Board to narrowly rebut evidence provided by the Respondent and therefore admissible. The Board notes that, due to its general nature, this affidavit would have been better placed in the Complainant's Disclosure Document as it expanded upon evidence contained therein; however the inclusion of this evidence does not prejudice the Respondent.

[53] The Board found the affidavit of the farmer, Robert Bilben, to be of little use. It spoke

predominantly in general terms on an overall area with minimal specifics to the subject parcel.

[54] The Board notes that on Schedule A of the affidavit the subject lands maybe depicted on the 'Field Map' but it is not conclusive. If the subject is depicted, there was a custom seed and fertilizer blend applied. There is also a note stating that the soil is: "*Rough, Very Poor Soil Type.*"

[55] The Board also notes that much of the sworn information which did contain specifics is proven inaccurate by other evidence or discredited by testimony. In example:

1) in points 3 and 4; the land is described as approximately 1,000 acres, the farm land lease contains 928 acres. The word 'approximately' could arguably defend the 1,000 acre comments however the Board deals with specifics.

2) in point 3; Mr. Bilben states that: "The Farm Land has been part of my farming operation continuously and uninterrupted since approximately 2006". Aerial photographs show a large portion of the subject parcel has been stripped and graded and therefore could not have been continuously farmed.

3) in point 5; Mr. Bilben states that: "As of October 2010, all the Farm Land is in use for either forage or cereal grain production without exception." The evidence from Mr. Charlton is that in mid-2008 14 acres of the subject was stripped and graded for a storm retention pond and is not in forage or cereal grain production.

8. Affidavit – Civil Engineering Technologist (C3 pages 11 – 17)

[56] Contained within the Rebuttal Document, the affidavit from the Civil Engineering Technologist is deemed by the Board to narrowly rebut evidence provided by the Respondent and therefore admissible. The Board notes that, due to its general nature, this affidavit would have been better placed in the Complainant's Disclosure Document as it expanded upon evidence contained therein; however the inclusion of this evidence does not prejudice the Respondent.

[57] The Board found the affidavit of the Civil Engineering Technologist, Ian Thomson (alternatively Ian Thompson), to be of little use. It spoke predominantly in general terms on an overall area with one photograph of the subject parcel, picture 2. This evidence provided the Board with little insight as to its *farm* status.

9. Invoice – Robert & Norma Bilben (C2 pages 29 and 30)

[58] Contained within rebuttal and deemed by the Board to be new evidence and therefore inadmissible as it does not directly refute any specific evidence presented by the Respondent. Even if the Board accepted the invoice from Robert & Norma Bilben as admissible; it referred to 255 acres only and contained no specifics related to date, location or anything which would tie the invoice to the subject parcel. In addition, the invoice is billed to a company which is neither the subject nor a Complainant for any of the 16 parcels before the Board. The invoice was received on March 14, 2011, outside the valuation period, at the offices of Kellam Berg Engineering and Surveys Ltd.

Board's Decision in Respect of Each Matter or Issue:

[59] The Board carefully examined the legislation and attendant regulations and made decisions based on what a reasonable person would conclude after hearing and viewing all the evidence and resources available to the Board. In Appendix "C" are excerpts from legislation, regulations and other resources the Board examined in arriving at the decisions.

Should the subject property be classified as farm land, non-residential land or a combination of both?

[60] The subject does not qualify for farm land status and has been correctly classified as non-residential.

[61] The Complainant started with an argument that the subject property is entirely *farm land*. These requests point directly to Matters 3 and 4 on the complaint form.

[62] The Respondent maintains that the subject has been stripped and graded with various land use designations. The subject has been assessed at a blended rate of \$237,177 per acre already adjusted for eligible influences. The site is classified as non-residential.

[63] The Board, when adjudicating this property, considered what a parcel must be for assessment purposes in order to be considered *farm land* of a *bona fide farming operation*.

[64] The Board reviewed the *Guidelines* as set out by the Minister in relation to *farm land* wherein the Board found that a *Manual* exists for assessment authorities to classify *farm land*; specifically in Schedule 7 of the *Manual*. The Board found in paragraph 7.010.002 of the *Manual* that *farm land* soil is rated by type and its proven capability of consistently producing, over an extended period of time, an income under average climatic conditions and typical management practices. The rating system assigns a rating through a comparability system which reflects the net income relationship between soils.

[65] With guidance from the *Manual* and the *Tax Act* the Board determined that these four things must be proven by landowners to illustrate a *bona fide farming operation*:

- a) an analysis of management practices to prove a typical bona fide farming operation,
- b) an analysis of the productive capacity of the land,
- c) an analysis of the income potential under average climatic conditions, and
- d) an analysis showing a history of production over an extended period of time.

[66] In making this conclusion, the Board is stating that a land lease to a farmer who sporadically tills the soil or cuts the grass and weeds is not enough to show a *bona fide farming operation*.

[67] The Board wants to evaluate a plan backed up with typical management practices showing that a parcel classified as *farm land* has a proven capability of consistently producing, over an extended period of time, income under average climatic conditions with an indication that the land has not been compromised by development. The Board wants to see effort and investment into the *farm land* with a reasonable expectation of success utilizing typical management practices. The Complainant's ARFI evidence indicates how unproductive the

subject is as *farm land*. The income reported shows a meagre crop and proves the land is not viable as a *bona fide farming operation*.

[68] The Board does not find the described activities of disking, seeding, rock picking and the application of fertilizer as a clear indication of a *farming operation*. The Board finds that these are merely activities associated with farming but not conclusive of the existence of a *bona fide farming operation*. The answer to the four questions above will determine whether the subject is actually *farm land* or vacant land being held for development on which minor farming activities are practiced in an attempt to avoid taxation.

[69] In this case the Board cannot see how stripping the topsoil and grading the topography for future industrial, commercial and utility development is typical of a *bona fide farming operation*.

[70] The Complainant testified that loam was reapplied to the subject to return the parcel to *farm land*. However the Board is not provided any evidence to show where, when, who, how and how much loam was replaced. The Board found that the preparation work for future urban development altered the land contour, drainage and organic content. It is unclear whether sufficient fertile topsoil remains for productive agricultural use. The Board wants the Complainant to provide a report from a qualified individual capable of assessing whether the parcel is viable as *farm land* after development and the reapplication of loam.

[71] There was a question about the appropriate discount for influences. The Board found no evidence to ascertain that the influences have been incorrectly applied and must remain as assessed unless proven wrong. The Complainant also commented on the value placed on these rolls; *"the market is what dictates value not the assessor's office. That is not the world of The City. That needs to be understood because the market does not support the values here."* The Board found this statement of interest however requires evidence in order to change an assessment.

[72] The Board finds, in this case, that the evidence from the Respondent carries more weight and that the entirety of the parcel is no longer *farm land* and is correctly classified as non-residential property.

Board's Decision:

[73] After considering all the evidence and argument, the Board determined that the subject parcel is not *farm land* and the subject is to be classified as non-residential and assessed at its *market value*.

| CLASSIFICATION | LUD | AREA (ACRES) | ASSESSMENT PER ACRE | ASSESSMENT AMOUNT | PERCENTAGE OF ASSESSMENT |
|-----------------|-------------------|-----------------|------------------------|----------------------|-----------------------------|
| Non-Residential | CR-3 and S-CRI | 24.37 | \$237,177 | \$5,780,003 | 100.00% |

[74] The assessment is confirmed at its truncated value of \$5,780,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF December 2011.


J. Dawson
Presiding Officer

APPENDIX "A"DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:

| NO. | ITEM |
|-----|--|
| 1. | C1 Complainant Disclosure |
| 2. | R1 Respondent Disclosure |
| 3. | C2 Rebuttal Disclosure – Photographs |
| 4. | C3 Rebuttal Disclosure – Argument and Evidence |

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

| Municipal Government Board use only: Decision Identifier Codes | | | | |
|--|----------------|-------------------|---------------------|------------|
| Appeal Type | Property Type | Property Sub-Type | Issue | Sub-Issue |
| CARB | Other Property | Vacant Land | Cost/Sales Approach | Land Value |

APPENDIX "B"**DISCLOSED DOCUMENTARY INFORMATION:**

The Board had the following documentary information from the Complainant to support its argument:

- 1) **Farm Lease** (C1 pages 75 – 86)
- 2) **Assessment Request for Information – Farm Land (ARFI)** (C1 pages 93 – 98)
- 3) **Photographs** (C1 pages 17, 18, and C2 pages 5 – 28)
- 4) **Workshop 158** from *Highest and Best Use Student Reference Manual © 2010 International Association of Assessing Officers (IAAO)* (C1 pages 38 - 43)
- 5) **Legal Argument and other information** (C1 page 1 through 16, 19 – 37, 44 – 74, 87 – 92, 99 – 110, C2 pages 1 – 4, 32, and C3 pages 18 – 44)
- 6) **Sworn Affidavit – Farmer Robert Blake Bilben** (C3 pages 2 – 9)
- 7) **Sworn Affidavit – Ian Thomson, CET** (C3 pages 11 – 17)
- 8) **Invoice from Robert & Norma Bilben** (C2 pages 29 and 30)

The Board had the following documentary information from the Respondent to support its argument:

- 1) **Photographs** (R1 pages 18, 23, 28 – 55, and 61 – 81)
- 2) **Legal Argument and other information** (R1 page 1 - 17, 18 – 22, 24 – 28, 56 – 60, and 82 - 181)

APPENDIX "C"

LEGISLATION AND RESOURCE MATERIALS:

The Municipal Government Act

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

Interpretation provisions for Parts 9 to 12

- 284(1)** *In this Part and Parts 10, 11 and 12,*
- (i) *"farming operations" has the meaning given to it in the regulations;*
 - (x) *"year" means a 12 month period beginning on January 1 and ending on the next December 31.*

Assessments for property other than linear property

- 289(2)** *Each assessment must reflect*
- (a) *the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*
 - (b) *the valuation and other standards set out in the regulations for that property.*

Assigning assessment classes to property

- 297(1)** *When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:*
- (a) *class 1 - residential;*
 - (b) *class 2 - non-residential;*
 - (c) *class 3 - farm land;*
 - (d) *class 4 - machinery and equipment.*
- 297(4)** *In this section,*
- (a) *"farm land" means land used for farming operations as defined in the regulations;*

Access to assessment record

- 299(1)** *An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.*
- 299(1.1)** *For the purposes of subsection (1), "sufficient information" in respect of a person's property must include*
- (a) *all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,*
 - (b) *the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and*
 - (c) *any other information prescribed or otherwise described in the regulations.*
- 299(2)** *The municipality must, in accordance with the regulations, comply with a request under subsection (1).*

Decisions of assessment review board

- 467(3)** *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*
- (a) *the valuation and other standards set out in the regulations,*
 - (b) *the procedures set out in the regulations, and*
 - (c) *the assessments of similar property or businesses in the same municipality.*
- 467(4)** *An assessment review board must not alter any assessment of farm land, machinery and equipment or railway property that has been prepared correctly in accordance with the regulations.*

Non-conforming use and non-conforming buildings

- 643(2)** *A non conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.*

Matters Related to Assessment and Taxation

Alberta Regulation 220/2004 with amendments up to and including Alberta Regulation 330/2009

Definitions

- 1** In this Regulation,
- (b) "agricultural use value" means the value of a parcel of land based exclusively on its use for farming operations;
 - (f) "assessment year" means the year prior to the taxation year;
 - (i) "farming operations" means the raising, production and sale of agricultural products and includes
 - (i) horticulture, aviculture, apiculture and aquaculture,
 - (ii) the production of horses, cattle, bison, sheep, swine, goats, fur-bearing animals raised in captivity, domestic cervids within the meaning of the Livestock Industry Diversification Act, and domestic camelids, and
 - (iii) the planting, growing and sale of sod;

Valuation standard for a parcel of land

- 4(1)** The valuation standard for a parcel of land is
- (a) market value, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Compliance review

- 27.6(1)** In this section, "compliance review" means a review by the Minister to determine if a municipality has complied with an information request under section 299 or 300 of the Act and this Part.
- 27.6(2)** An assessed person may make a request to the Minister, in the form and manner required by the Minister, for a compliance review if the assessed person believes that a municipality has failed to comply with that person's request under section 299 or 300 of the Act.
- 27.6(3)** A request for a compliance review must be made within 45 days of the assessed person's request under section 299 or 300 of the Act.

Matters Related to Assessment Complaints

Alberta Regulation 310/2009

Disclosure of evidence

- 8(2)** If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:
- (a) the complainant must, at least 42 days before the hearing date,
 - (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
 - (b) the respondent must, at least 14 days before the hearing date,
 - (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
 - (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

Postponement or adjournment of hearing

- 15(1)** Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

2010 Alberta Farm Land Assessment Minister's Guidelines

Ministerial Order No. L:268/10;

2.000 Schedule A

2.001 Agricultural Use Value Base Rate

| | Dry Arable Land | Dry Pasture Land | Irrigated Arable Land | Woodlot |
|-----------|--------------------|---------------------|--------------------------|---------|
| Base Rate | 350 | 350 | 450 | 135 |

3.000 Schedule B

3.001 Assessment Year Modifier

| Assessment Year | Dry Arable Land | Dry Pasture Land | Irrigated Arable Land | Woodlot |
|--------------------|--------------------|---------------------|--------------------------|---------|
| 2010 | 1.00 | 1.00 | 1.03 | 1.00 |

4.000 Schedule C

4.001 Final Rating Factor

The Final Rating Factors for dry arable land, dry pasture land and irrigated arable land are contained in Schedule 7 of the 1984 Alberta Assessment Manual.

1984 Alberta Assessment Manual

Schedule 7;

Farm Land

7.010.000 General Information

7.010.001 Standards and methods for the assessment of farm land, for property tax purposes, are explained in Schedule 7. The procedures are designed to measure the potential capacity of farm land to produce income from farming operations. The ratings measure the ability of the soil to produce crops, modified by climatic conditions and adjustments to reflect costs of operation under normal management practices, for each of the various agricultural regions of the Province.

7.010.002 The assessment value established for land under agricultural production is computed by application of a rating system that reflects the ability of the various types of soils to generate an income from the production of agricultural crops. The rating system assigns a numerical rating of 100 to the soil type proven to be capable of consistently producing, over an extended period of time, the highest net income under average climatic conditions and typical management practices. The rating of 100 also assumes that the highest net income produced under optimum physical characteristics of the soil. All other soils are rated through a comparative rating system which reflects the net income relationships that exists between other types of soils and the soil type rated at 100. Further adjustments are also made to account for less than optimum physical characteristics. In summary, soils that generate a lesser net income are assigned a correspondingly lower rating which in turn is reflected in the assessment value of the land under crop production. In extreme cases, the gross income produced from a soil under cultivation does not cover costs of production. Under such circumstances, the land is rated for its potential as improved pasture or native pasture lands. Lands only suitable for grazing are rated on the basis of carrying capacity and the rating assigned is a reflection of such factors as quantity and quality of the grass cover and the quality of the soil itself.

7.010.003 The application of the rating system is accomplished by firstly identifying and describing the physical properties present in a specific property. A comparative numeric rating system has been established to represent the desirability of the identified physical properties of a subject property. This comparative rating system establishes how each specific property rates on a provincial basis. The rating is then multiplied by a regulated base rate and a regulated factor to form an assessment on a per unit of area basis.

Income Tax Act

Interpretation Bulletin: IT-322R (Farming Business)

Farming Business

4 In determining whether or not a farming operation is a business, the following are some of the criteria which must be considered:

- (a) the extent of activity in relation to that of businesses of a comparable nature and size in the same locality. The main test is the size of the property used for farming. If it is much too small to give any hope of profit, the presumption is that the property is being held for personal use or enjoyment of the taxpayer. On the other hand, where the land is large enough to be profitable, it may also be non-business, but in limited circumstances. Where for example, the taxpayer has made no attempt at farming or developing the land and has no viable plans to do so, it is presumed the land is held for personal use or enjoyment or for capital gain.... This is particularly so where the taxpayer has a more or less regular job and devotes little time to the farm. This of course assumes that the taxpayer has not employed other persons to carry on a farming operation. The farm may also be non-business where the taxpayer, over a number of years, has demonstrated that there was no intention of utilizing more than a fraction of the land;
 - (b) If the taxpayer spends most of his or her time during the crop season attending to the farm, there is a strong presumption that he or she is carrying on a farming business. This is particularly so where the taxpayer has farming background or experience;
 - (c) the development of the farming operation and commitments for future expansion according to the taxpayer's available resources. This test is based on the capital investment of the taxpayer in the operation over a number of years and on the acquisitions of buildings, machinery, equipment and inventory by the taxpayer;
- 5 The most usual indication that a farming operation does not constitute a business with a reasonable expectation of profit is that it reports no, or a very small amount of, gross income for several years. However, consideration must be given to the fact that such a situation may arise in the first years of a farming operation.... The fact that a taxpayer, in a given taxation year or for years before and after, had or appeared to have no reasonable expectation of profit is one of the facts to be considered in determining whether or not the taxpayer was in the business of farming in that year.
- 6 For purposes of the Act, the word "farming" is given a wide definition by subsection 248(1). It includes tillage of the soil....

Black's Law Dictionary

Bryan A. Garner (Editor-in-Chief). © 2009. Black's Law Dictionary (9th ed.). St. Paul: Thomson Reuters;

agriculture: the science or art of cultivating soil, harvesting crops, and raising livestock.

bona fide: made in good faith.

sincere; genuine.

bona fide contract: a contract in which equity may intervene to correct inequalities and to adjust matters according to the parties' intentions.

bona fide operation: a real, ongoing business.

crops: products that are grown, raised and harvested.

farm, n: land and connected buildings used for agricultural purposes.

farm, vb: to cultivate land; to conduct the business of farming.

farming operation: a business engaged in farming, tillage of soil, dairy farming, ranching, raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

The Canadian Oxford Dictionary

Katherine Barber (Editor-in-Chief). © 2004. The Canadian Oxford dictionary (2nd ed.). Toronto: Oxford University Press Canada;

agriculture, n: the science or practice of cultivating the soil and rearing animals.

bona fide: genuine; sincere; in good faith.

farm, n: an area of land, and the buildings on it, used for growing crops, rearing animals, etc.

farm, vb: use (land) for growing crops, rearing animals, etc.

farmland, n: land used or suitable for growing crops.